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SENATE BILL 34

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO TRANSPORTATION; ENACTING THE REGIONAL TRANSIT DISTRICT ACT; AUTHORIZING THE CREATION OF REGIONAL TRANSIT DISTRICTS; PROVIDING THE POWERS AND DUTIES OF REGIONAL TRANSIT DISTRICTS; PROVIDING FOR THE POWERS AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS; AUTHORIZING ISSUANCE OF BONDS; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Regional Transit District Act".

Section 2. PURPOSE. -- The purpose of the Regional Transit District Act is to:

A. serve the public by providing for the creation of regional networks of safe and efficient public transit

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1 services;

2 B. allow multijurisdictional public transit systems
3 to reduce the congestion of single-occupant motor vehicle
4 traffic by providing transportation options for residents;

5 C. decrease automobile accidents by reducing
6 traffic congestion on freeways and streets;

7 D. reduce noise and air pollution produced by motor
8 vehicles;

9 E. prolong and extend the life of New Mexico's
10 existing roadways by easing the traffic burden;

11 F. provide residents with a choice of
12 transportation alternatives so that seniors, youth, low-income
13 and mobility-impaired residents and others unable to drive or
14 afford motor vehicles continue to have full access to the
15 goods, services, jobs and activities of the community;

16 G. improve the New Mexico economy by increasing
17 workforce and citizen access to education and higher paying
18 jobs; and

19 H. prolong and extend petroleum resources.

20 Section 3. DEFINITIONS. -- As used in the Regional Transit
21 District Act:

22 A. "board" means the board of directors of a
23 district;

24 B. "bond" means a revenue bond;

25 C. "combination" means two or more governmental

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1 units that exercise joint authority;

2 D. "commission" means the state transportation
3 commission;

4 E. "construct" or "construction" means the
5 planning, designing, engineering, acquisition, installation,
6 construction or reconstruction of a regional transit system;

7 F. "district" means a regional transit district
8 that is a political subdivision of the state created pursuant
9 to the Regional Transit District Act;

10 G. "governmental unit" means the state, a county or
11 a municipality of the state or an Indian nation, tribe or
12 pueblo located within the boundaries of the state;

13 H. "regional transit system" means a property,
14 improvement or system designed to be compatible with
15 established state and local transportation plans that
16 transports or conveys passengers within a region by means of a
17 high-occupancy vehicle, including an automobile, truck, bus,
18 van or railcar; and

19 I. "revenues" means tolls, fees, rates, charges,
20 assessments, grants, contributions or other income and revenues
21 received by the district.

22 Section 4. CREATION OF DISTRICTS. --

23 A. A combination may create a district by contract.
24 Upon the issuance by the commission of a certificate stating
25 that the district has been duly organized according to the

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1 provisions of the Regional Transit District Act, the district
2 may exercise the functions conferred by the provisions of that
3 Act. The commission shall issue the certificate within thirty
4 days of the filing with the commission of a copy of a contract
5 that fulfills all the requirements set forth in this section
6 and a copy of the bylaws and operating procedures of the
7 district. The commission shall cause the certificate to be
8 recorded in each county having territory included in the
9 boundaries of the district. Upon issuance of the certificate
10 by the commission, the district shall constitute a separate
11 political subdivision of the state and shall have all of the
12 duties, privileges, immunities, rights, liabilities and
13 disabilities of a political subdivision.

14 B. A contract establishing a district shall specify
15 the:

16 (1) name and purpose of the district and the
17 regional transit systems to be provided;

18 (2) establishment and organization of the
19 board in which all legislative power of the district is vested;

20 (3) manner of the appointment, term of
21 service, qualifications and compensation, if any, of the
22 directors and the procedure for filling vacancies;

23 (4) officers of the district, the manner of
24 their appointment and their duties;

25 (5) voting requirements for action by the

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1 board;

2 (6) provisions for the distribution,
3 disposition or division of the assets of the district;

4 (7) boundaries of the district, which shall
5 not include territory:

6 (a) outside the boundaries of the
7 members of the combination without the consent of the governing
8 body of the governmental unit of the territory; or

9 (b) within the unincorporated boundaries
10 of a county that is not a member of the combination as the
11 unincorporated boundaries of the county exist on the date the
12 district is created without the consent of the governing body
13 of the county;

14 (8) term of the contract and the method by
15 which it may be terminated or rescinded. The contract shall
16 not be terminated or rescinded so long as the district has
17 bonds outstanding;

18 (9) provisions for amendment of the contract;

19 (10) limitations on the powers granted by the
20 Regional Transit District Act that may be exercised by the
21 district; and

22 (11) conditions required when adding or
23 deleting parties to the contract pursuant to Section 18 of the
24 Regional Transit District Act.

25 C. A governmental unit shall not enter into a

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1 contract establishing a district without holding at least one
2 public hearing in addition to other requirements imposed by law
3 for public notice. The governmental unit shall give notice of
4 the time, place and purpose of the public hearing by
5 publication in a newspaper of general circulation in the
6 governmental unit at least ten days prior to the date of the
7 public hearing.

8 D. Upon the approval of the governor, the state may
9 join in a contract creating a district. The number of
10 directors of the board to which the state is entitled shall be
11 established in the contract, but in no case shall the state be
12 entitled to less than one director. The governor shall appoint
13 the director or directors representing the state on the board,
14 for a term as established by the contract that created the
15 district.

16 Section 5. BOARD. --

17 A. All powers, privileges and duties vested in or
18 imposed upon the district shall be exercised and performed by
19 the board. The board may delegate its powers by resolution to
20 an officer or agent of the board, with the exception of the
21 following:

- 22 (1) adoption of board policies and procedures;
- 23 (2) ratification of acquisition of land by
24 negotiated sale;
- 25 (3) institution of an eminent domain action;

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- (4) initiation or continuation of legal action, not involving traffic or toll violations;
- (5) establishment of policies regarding fees, tolls, rates or charges; and
- (6) approval of significant route or schedule changes affecting more than twenty-five percent of a regional transit system.

B. The board shall promulgate and adhere to policies and procedures that govern its conduct and provide meaningful opportunities for public input. These policies shall include standards and procedures for calling emergency meetings.

C. The board shall be composed of at least one director from each governmental unit that is a member of the district. A director shall be an elected official or his designee. A governmental unit shall not have a majority of membership on the board, unless there are three or fewer participating governmental units in the district.

D. A director of the board shall not vote on an issue when the director has a conflict of interest. A director of the board, officer of the board or employee of the board shall not:

- (1) acquire a financial interest in a new or existing business venture or business property of any kind when he believes or has reason to believe that the new financial

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1 interest will be directly affected by his official act;

2 (2) use confidential information acquired by
3 virtue of his office or employment for his or another's private
4 gain; or

5 (3) contract with the district without public
6 notice and competitive bidding and full disclosure of his
7 financial or other interest in the business that is party to
8 the contract.

9 E. The attorney general shall investigate and
10 prosecute, when appropriate, a complaint brought to his
11 attention involving a violation of Subsection D of this
12 section. Violation of the provisions of Subsection D of this
13 section by a director of the board, officer of the board or
14 employee of the board is grounds for removal or suspension of
15 the director or officer and dismissal, demotion or suspension
16 of the employee.

17 F. In addition to all other powers conferred by the
18 Regional Transit District Act, the board may:

19 (1) adopt bylaws;

20 (2) fix the time and place of meetings and the
21 method of providing notice of the meetings;

22 (3) make and pass orders and resolutions
23 necessary for the government and management of the affairs of
24 the district and the execution of the powers vested in the
25 district;

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1 (4) adopt and use a seal;
2 (5) maintain offices at a place as the board
3 may designate;

4 (6) appoint, hire and retain employees,
5 agents, engineers, attorneys, accountants, financial advisors,
6 investment bankers and other consultants;

7 (7) prescribe, in accordance with the
8 Procurement Code, methods for auditing and allowing or
9 rejecting claims and demands for:

10 (a) the awarding of contracts for the
11 construction of improvements, works or structures;

12 (b) the acquisition of equipment; or

13 (c) the performance or furnishing of
14 labor, materials or supplies as may be required for carrying
15 out the purposes of the Regional Transit District Act; and

16 (8) appoint advisory committees and define the
17 duties of the committees.

18 Section 6. POWERS OF THE DISTRICT. --

19 A. A district is a body politic and corporate. In
20 addition to other powers granted to the district pursuant to
21 the Regional Transit District Act, the district may:

22 (1) have perpetual existence, except as
23 otherwise provided in the contract;

24 (2) sue and be sued;

25 (3) enter into contracts and agreements

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1 affecting the affairs of the district;

2 (4) establish, collect and increase or
3 decrease fees, tolls, rates or charges for the use of property
4 of a regional transit system financed, constructed, operated or
5 maintained by the district; except that fees, tolls, rates or
6 charges imposed for the use of a regional transit system shall
7 be fixed and adjusted to pay for bonds issued by the district;

8 (5) pledge all or a portion of the revenues to
9 the payment of bonds of the district;

10 (6) finance, construct, operate or maintain
11 regional transit systems within the boundaries of the district;

12 (7) purchase, trade, exchange, acquire, buy,
13 sell, lease, lease with an option to purchase, dispose of and
14 encumber real or personal property and interest therein,
15 including easements and rights of way;

16 (8) accept real or personal property for the
17 use of the district and accept gifts and conveyances upon the
18 terms and conditions as the board may approve;

19 (9) use the streets, highways and other public
20 ways and, with permission of the owner, to relocate or alter
21 the construction of streets, highways, other public ways,
22 electric and telephone lines and properties, pipelines,
23 conduits and other properties, whether publicly or privately
24 owned, if deemed necessary by the district in the construction,
25 reconstruction, repair, maintenance and operation of the

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1 system. Any damage that may occur to the property shall be
2 borne by the district; and

3 (10) provide transportation services outside
4 the boundaries of the district.

5 B. After the creation of a district, the board may
6 include property within or exclude property from the boundaries
7 of the district in the manner provided in this section.

8 Property shall not be included within the boundaries of the
9 district unless it is within the boundaries of the members of
10 the combination at the time of the inclusion. Property located
11 within the boundaries of a governmental unit that is not a
12 member of the combination as the boundaries of the governmental
13 unit exist on the date the property is included shall not be
14 included without the consent of the governing body of the
15 governmental unit. Prior to inclusion of property in or
16 exclusion of property from the boundaries of the district, the
17 board shall cause notice of the proposed inclusion or exclusion
18 to be published in a newspaper of general circulation within
19 the boundaries of the district and cause the notice to be
20 mailed to the commission. The notice shall:

21 (1) describe the property to be included in or
22 excluded from the boundaries of the district;

23 (2) specify the date, time and place at which
24 the board shall hold a public hearing on the proposed inclusion
25 or exclusion; provided that the date of the public hearing

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1 contained in the notice shall be not less than twenty days
2 after publication of the notice; and

3 (3) state that persons having objections to
4 the inclusion or exclusion may appear at the public hearing to
5 object to the proposed inclusion or exclusion.

6 C. The board shall hear all objections to the
7 proposed inclusion or exclusion at the time and place
8 designated in the notice. The board, upon the affirmative vote
9 of two-thirds of the directors, may adopt a resolution
10 including or excluding all or a portion of the property
11 described in the notice. Upon the adoption of the resolution,
12 the property shall be included within or excluded from the
13 boundaries of the district as set forth in the resolution. The
14 board may adopt the resolution without amending the district's
15 enabling contract. The board shall file the resolution with
16 the commission, who shall cause the resolution to be recorded
17 in the real estate records of each county having territory
18 included in the boundaries of the district.

19 Section 7. TOLL COLLECTION. --

20 A. A district may promulgate rules regarding
21 collection of fees, tolls, rates or charges. State and local
22 law enforcement authorities may enter into traffic and toll
23 enforcement agreements with a district.

24 B. A person who fails to pay a fee, toll, rate or
25 charge required for the privilege of traveling on or using

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1 property included in a regional transit system may be assigned
2 a fine of not more than one hundred fifty dollars (\$150) or not
3 less than fifty dollars (\$50.00). The magistrate or
4 metropolitan court where the offense took place shall have
5 jurisdiction over actions brought pursuant to this subsection.

6 Section 8. BONDS. --

7 A. A district may issue bonds solely for the
8 purpose of financing the purchase, construction, renovation,
9 equipping or furnishing of a regional transit system project.
10 The district shall issue the bonds pursuant to resolution of
11 the board, and the bonds shall be payable solely out of all or
12 a specified portion of the revenues as designated by the board.
13 Proceeds of the bonds may be used to pay expenses incurred in
14 the preparation, issuance and sale of the lands.

15 B. As provided in the resolution of the board under
16 which the bonds are authorized to be issued, the bonds shall:

17 (1) be executed and delivered by the district;
18 (2) be in a form and denomination and include
19 terms and maturities;

20 (3) be subject to optional or mandatory
21 redemption prior to maturity with or without a premium;

22 (4) be in fully registered form or bearer form
23 registrable as to principal or interest or both;

24 (5) bear conversion privileges;

25 (6) be payable in installments and at a time

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1 not exceeding forty years from the date of issuance;

2 (7) be payable within or outside the state;

3 (8) have the principal paid in yearly amounts
4 beginning not later than two years from the date of issuance of
5 the bonds;

6 (9) be subject to purchase at the option of
7 the holder or the district;

8 (10) be executed by the officers of the
9 district, including the use of one or more facsimile signatures
10 so long as at least one manual signature appears on the bonds,
11 which signatures may be either of an officer of the district or
12 of an agent authenticating the same;

13 (11) be in the form of coupon bonds that have
14 attached interest coupons bearing a manual or facsimile
15 signature of an officer of the district; and

16 (12) be sold at a net effective interest rate
17 not exceeding the maximum net effective interest rate permitted
18 by the Public Securities Act.

19 C. Bonds may be sold at public or private sale at a
20 price, in a manner and at a time determined by the board, and
21 the board may pay all fees, expenses and commissions that it
22 deems necessary or advantageous in connection with the sale of
23 the bonds. The power to fix the date of sale of the bonds,
24 receive bids or proposals, award and sell bonds, fix interest
25 rates and take all other action necessary to sell and deliver

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1 the bonds may be delegated to an officer or agent of the
2 district. Outstanding bonds may be refunded by the district as
3 provided in the Public Securities Act.

4 D. A resolution authorizing the issuance of bonds
5 may pledge all or a portion of the revenues of the district,
6 may contain a provision for protecting and enforcing the rights
7 and remedies of holders of the bonds as the district deems
8 appropriate, may set forth the rights and remedies of the
9 holders of the bonds and may contain provisions that the
10 district deems appropriate for the security of the holders of
11 the bonds.

12 E. A pledge of revenues or property made by a
13 district or by a person or governmental unit with which a
14 district contracts shall be valid and binding from the time the
15 pledge is made. The revenues or property so pledged shall
16 immediately be subject to the lien of the pledge without a
17 physical delivery or further act, and the lien of the pledge
18 shall be valid and binding against all parties having claims in
19 tort or contract or otherwise against the pledging party,
20 irrespective of whether the claiming party has notice of the
21 lien.

22 F. Neither the directors of the board, employees of
23 the district or a person executing the bonds shall be liable
24 personally on the bonds or subject to personal liability or
25 accountability by reason of the issuance of the bonds.

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1 G. A district may purchase its bonds out of
2 available funds and may hold, pledge, cancel or resell the
3 bonds subject to and in accordance with agreements with the
4 holders.

5 H. Bonds shall be payable solely from pledgeable
6 revenue and shall not constitute an indebtedness or general
7 obligation of the district, the state or other political
8 subdivisions of the state.

9 I. The form and terms of bonds shall be approved by
10 the state board of finance before issuance of the bonds.

11 Section 9. AGREEMENT OF THE STATE NOT TO LIMIT OR ALTER
12 RIGHTS OF OBLIGEEES. --The state pledges and agrees with the
13 holders of bonds issued under the Regional Transit District Act
14 and with those parties who enter into contracts with a district
15 or a member of a combination pursuant to the Regional Transit
16 District Act that the state will not impair the rights vested
17 in the district or the rights or obligations of a person with
18 which the district contracts to fulfill the terms of an
19 agreement made pursuant to the Regional Transit District Act.
20 The state further agrees that it will not impair the rights or
21 remedies of the holders of the bonds of a district until the
22 bonds have been paid or until adequate provision for payment
23 has been made. A district may include this provision and
24 undertaking for the state in bonds.

25 Section 10. INVESTMENTS. --A board may invest or deposit

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1 funds in accordance with the prudent investor rule set forth in
2 the Uniform Prudent Investor Act. The board may employ
3 investment management services to invest the funds and may pay
4 reasonable compensation for investment management services from
5 the assets of the applicable funds, subject to budgeting and
6 appropriation by the legislature. The board shall keep
7 accurate and complete records and accounts concerning the
8 investment portfolio.

9 Section 11. EXEMPTION FROM TAXATION.--The income or other
10 revenues of a district, all properties at any time owned by a
11 district, all bonds issued by a district and the income from
12 the bonds issued by a district are exempt from taxation in the
13 state.

14 Section 12. COOPERATIVE POWERS.--A district may cooperate
15 with a person to:

16 A. accept legitimate contributions or liens
17 securing obligations of the district from the person with
18 respect to the financing, construction, operation or
19 maintenance of a regional transit system and, in connection
20 with a loan or advance, enter into contracts establishing the
21 repayment terms;

22 B. enter into contracts regarding the financing,
23 construction, operation or maintenance of a specified regional
24 transit system;

25 C. enter into joint operating contracts concerning

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1 a regional transit system;

2 D. acquire easements or rights of way for a
3 regional transit system; and

4 E. designate a regional transit system as part of
5 the state highway system, a county highway system or a
6 municipal highway system if the person with jurisdiction over
7 the applicable highway system consents to the designation.

8 Section 13. POWERS OF GOVERNMENTAL UNITS. -- A governmental
9 unit, for the purpose of aiding the financing, construction,
10 operation or maintenance of a regional transit system, may:

11 A. sell, lease, loan, donate, grant, convey,
12 assign, transfer and otherwise dispose to the district real or
13 personal property or interests therein;

14 B. enter into agreements with a person for the
15 joint financing, construction, operation or maintenance of a
16 regional transit system. Upon compliance with applicable
17 constitutional or charter limitations, the governmental unit
18 may agree to make payments, without limitation as to amount
19 except as set forth in the agreement, from revenues received
20 from one or more fiscal years, to the district or a person to
21 defray the costs of the financing, construction, operation or
22 maintenance of a regional transit system; and

23 C. transfer to the district a contract that may
24 have been awarded by the governmental unit for construction,
25 operation or maintenance of a regional transit system.

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1 Section 14. NOTICE-- OPPORTUNITY FOR COMMENT. --

2 A. At least forty-five days prior to a meeting at
3 which the board shall consider or take action on a proposal to
4 request, establish, increase or decrease a rate, toll, fee or
5 charge, the board shall deliver written notice of the meeting
6 and proposal to a governmental unit where the proposed rate,
7 toll, fee or charge will be imposed. The affected governmental
8 unit shall be afforded a reasonable opportunity for comment,
9 either at a regular meeting of the board or at a special
10 meeting convened to receive comment.

11 B. At least seven business days prior to a
12 regularly scheduled meeting, the board shall make available to
13 the public written or electronic notice of the time and agenda
14 of the meeting. The board shall designate during each meeting
15 a public comment period and shall offer the public an
16 opportunity to comment.

17 Section 15. NOTICE-- COORDINATION OF INFORMATION. --

18 A. At least forty-five days prior to the imposition
19 of or an increase in a rate, toll, fee or charge or prior to
20 the issuance of bonds as authorized in the Regional Transit
21 District Act, a notice specifying the amount of the fee, toll,
22 rate or charge and its proposed duration or the value and
23 number of bonds to be issued shall be sent to the commission
24 and to the taxation and revenue department.

25 B. The commission shall file an annual report with

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1 the state auditor concerning the activities of all active
2 districts. The report shall detail how many districts have
3 been created, describe their boundaries and specify the
4 regional transit systems that are being provided and how they
5 are being financed.

6 Section 16. POWER OF EMINENT DOMAIN. --A district may
7 exercise the power of eminent domain in the manner provided by
8 law for the condemnation of private property for a purpose
9 necessary to carry out the Regional Transit District Act.

10 Section 17. TAXATION. --A district has no direct taxation
11 authority.

12 Section 18. ADDITION OR WITHDRAWAL OF TERRITORY BY A
13 DISTRICT. --

14 A. After the creation of a district, a governmental
15 unit adjacent to but not part of that district may join the
16 district and determine the territorial area to become a part of
17 that district. A two-thirds' affirmative vote by the board
18 shall be required before the governmental unit may join the
19 district.

20 B. A governmental unit that is a member of a
21 district may withdraw from the district by adopting a
22 resolution to withdraw. The governmental unit shall withdraw
23 its representative from the board. Real property owned by the
24 district within the boundaries of the withdrawing governmental
25 unit shall remain the property of the district. The provisions

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1 of withdrawal shall be negotiated and agreed to by the board,
2 the governmental unit and the commission.

3 Section 19. MATCHING FUNDS. --The local government members
4 of a combination shall match at least one dollar (\$1.00) for
5 every four dollars (\$4.00) provided by the state. Before a
6 district is able to receive state matching funds, it must be
7 certified by the commission pursuant to Section 4 of the
8 Regional Transit District Act.

9 Section 20. APPROPRIATION. --One million nine hundred
10 thousand dollars (\$1,900,000) is appropriated from the general
11 fund to the state highway and transportation department to be
12 used as matching funds for the costs of forming a regional
13 transit district and the costs of developing a transportation
14 service plan by a regional transit district in fiscal years
15 2004 and 2005. No more than two hundred thousand dollars
16 (\$200,000) may be expended in creating one regional transit
17 district. The state highway and transportation department may
18 use up to seventy-five thousand dollars (\$75,000) of this
19 appropriation to cover the costs of administrating this
20 appropriation. Any unexpended or unencumbered balance
21 remaining at the end of fiscal year 2005 shall revert to the
22 general fund.